

Technical Advisory No. 20 (continued)

The following chart is a comparison of information on the H-1B and O-1 Nonimmigrant Visas

	H-1B	O-1
Purpose	Temporary nonimmigrant employee in a specialty occupation position.	Temporary nonimmigrant employee who is of extraordinary ability or achievement in the sciences.
Time Limit of U.S. Stay Note: Currently, there is an eight-year maximum duration at NIH without tenure-track or intent for tenure designation.	6 years	No specific time limitation: up to 3 years initially, extensions may be requested in one-year increments to continue the same event. (NIH policy prohibits initial appointment of longer than 2 years).
Eligibility Criteria	A specialty occupation requires theoretical and practical application of a body of highly specialized knowledge in fields including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent as the minimum entry into the occupation in the United	Extraordinary ability in the sciences requires demonstration of sustained national or international acclaim. Must be coming to the U.S. to continue work in the area of extraordinary ability and engage in a specific event such as a scientific project.

	<p>States. Individual must possess:</p> <p>(1) full state licensure to practice in the occupation, of licensure is a requirement for the occupation;</p> <p>(2) the required professional degree; or</p> <p>(3) experience in the specialty equivalent to the completion of required degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.</p>	
Peer Review of Petition Prior to Filing with USCIS	Not required	<p>Required. Consultation with a peer group in the area of the individual's ability, or persons with expertise in the area of the individual's ability is required. A written advisory opinion must describe the individual's ability and achievements in the field of endeavor, the nature of the duties to be performed, and state whether the position requires the services of an individual of extraordinary ability.</p>

Effect of foreign-residency requirement of the J-1 Exchange Visitor Program [Sec. 212(e) of the INA, as amended] on eligibility to obtain other nonimmigrant status	A waiver of the J-1 foreign residency requirement is necessary to obtain an H-1B, whether changing status in the U.S. or obtaining the H-1B visa abroad.	A waiver of the J-1 foreign residency requirement is necessary to change status from J-1 to O-1 within the U.S. However, a J-1 may leave the U.S. and apply for an O-1 visa abroad without having the waiver. In this instance, the individual remains subject to the J-1 foreign residency requirement until it is satisfied or waived.
Limit on Numbers of Visas Issued per Fiscal Year	Yes, but NIH, as a U.S. Federal Government Agency, is exempt from this limit.	None
Dual Intent: Work in the U.S. Temporarily Now and Permanently in Future	Permitted. The approval of a permanent labor certification or the filing of a preference petition for an individual shall not be a basis for denying a petition, or the alien's application for admission, change of status, or extension of stay. The individual may legitimately come to the U.S. for a temporary period as an H-1B nonimmigrant (and depart voluntarily at the end of his or her authorized stay) and, at the same time, lawfully seek to become a permanent resident of the United States.	Same as H-1B

Timeframe for Filing Petitions with USCIS	Petitions may be filed no more than 180 days prior to the expected start date. Individuals may enter the U.S. up to 10 days prior to the start date of the approved petition but may not commence work until the effective date of the approval. (Allow four to six weeks to obtain USCIS approval of the petition.)	Same as H-1B
Validity of Initial Petition	Up to three years.	Up to three years.
Labor Condition Application (LCA)	Yes	No
Transfer from NIH to Another Program/Institution	Not possible. However, another organization/institution may petition for a new H-1B status if time remains within the basic 6-year eligibility period.	Not possible. However, another organization/ institution may petition for a new O-1 status to begin a new event at the new establishment.
Visa Revalidation While in the U.S. Prior to Departure from the U.S.	Not Possible	Not Possible
Employment Authorization for Dependents	None	None
FTE Required	Yes	Yes

Direct Patient Contact [for Foreign Medical Graduates (FMG)]	<p>An FMG may perform medical services if:</p> <p>(1) invited to a U.S. public or nonprofit private educational or research institution to teach or conduct research, or both, or</p> <p>(2)(i) has passed the FLEX exam or an equivalent exam as determined by the Secretary, DHHS (NBME or USMLE; FMGEMS not equivalent to FLEX) and (ii) has competency in oral and written English or</p> <p>(3) is a graduate of a school of medicine in the U.S. or abroad accredited by a body approved for such purpose by the Secretary, Dept. of Education.</p>	Regulations do not address any patient contact possibilities for O-1s. The title of the classification applies to involvement in a specific event in the sciences.
Social Security/Medicare Taxes	Yes	Yes
Petitioner Responsible for Return Travel Expenses to Last Place of Residence Prior to Entry into the U.S.	Yes, if dismissed prior to original expiration date of the H-1B petition.	Yes, if dismissed prior to original expiration date of the O-1 petition.
State Licensure	Required if the work to be performed is in an occupation which requires a degree and license.	Not specifically required in the regulations.
Petition Filing Fees for Principal and Dependents	Yes	Yes

Health Insurance	Required by the NIH.	Required by the NIH.
Tenure Track Designation Applicability to Nonimmigrant	Permissible	Permissible
Occasional Lectures or Short-Term Consultations	Yes; however, reimbursement is limited to per diem and travel expenses, no honorarium. Refer to NIH Manual Chapter 2300-735-4 for guidance relative to NIH employees.	Yes; however, reimbursement is limited to per diem and travel expenses, no honorarium. Refer to NIH Manual Chapter 2300-735-4 for guidance relative to NIH employees.
Procedures for Extension of Stay in the U.S.	File petition and fee with a USCIS Service Center. Extensions may be requested in any combination of years up to a maximum of 6 years [plus an additional 10 days allowed by USCIS after the expiration of the H-1B to allow the beneficiary to get his or her personal affairs in order (individual is not employable during the extra 10 days)]; however, appointments at NIH may be made for only two years at a time. Individual must be physically present in the U.S. to request an extension of stay.	File petition and fee with the USCIS Service Center. Although USCIS allows 3 years for the initial appointment, NIH limits it to 2. Extensions are obtainable in one-year increments to continue the same activity for which admitted, plus an additional 10 days after the expiration of the O-1 to allow the beneficiary to get his or her personal affairs in order (individual is not employable during the extra 10 days). Individual must be physically present in the U.S. to request an extension. There is no maximum limitation for length of stay.

Other Agencies' Approvals Required for Initial and Extension Petitions	Yes. DOL, USCIS, and DOS (if outside the U.S.).	Yes. USCIS and DOS (if outside the U.S.).
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Abbreviation Guide:

- **ECFMG** - Educational Commission for Foreign Medical Graduates
- **USCIS** - U.S. Citizenship and Immigration Services
- **DOL** - U.S. Department of Labor
- **LCA** - Labor Condition Application
- **DOS** - U.S. Department of State

INA - Immigration and Nationality Act